IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 375 of 1990

1. New Maharashtra Education
Society, Solapur
2. Lokseva High School,Solapur..Appellants

V/s

1. The Deputy Director of Education,
Pune Region, Pune
2. The Education Officer,
Z.P. Solapur
3. The State of Maharashtra
4. Sham Babulal Trivedi ... Respondents

Shri Yogesh Mehta for Appellants
Mrs.G.P.Mulekar,AGP for Respondent nos.1 to 3
Shri A.G.Pawar for Respondent no.4

CORAM:S.R.SATHE,J.
DATED:30th July 2004

ORAL JUDGMENT :-

1. Being aggrieved by the judgment and order passed

by the Court of 4th Additional District Judge, Solapur in Civil Appeal No.24 of 1980 whereby the order passed by the Court of Joint Civil Judge, S.D., Solapur in Regular Civil Suit No.860 of 1980, dismissing the suit was confirmed and the appeal was dismissed, the defendant nos. 1 and 2 have preferred this second appeal.

2. For the sake of convenience hereafter the parties shall be referred to as plaintiffs and defendants.

3. Brief facts giving rise to this Second Appeal are as under :-

. Plaintiff no.1 is a registered education society and plaintiff no.2 is the high school run by plaintiff no.1. Defendant no.4 was working in the said high school as a temporary clerk. On 21-1-1976 defendant no.4 submitted his resignation. Thereafter on 10-2-1976 he sent letter to the plaintiffs for withdrawing the said resignation. In spite of the same, the plaintiffs issued notice dated 3-3-1976 to the defendant no.4 and terminated his services. Being aggrieved by the same, the defendant no.4 approached the defendant nos.1 and 2 i.e. the Deputy Director, Pune Division and the Education Officer, Z.P. Solapur respectively. Thereafter they had in fact directed the plaintiffs to reinstate defendant no.4 and include his name in pay sheet (salary slip). According to the

plaintiffs the defendants had in fact no right to interfere with the order passed by them regarding termination of service of defendant no.4. The plaintiffs, therefore, filed Regular Civil Suit No.860 of 1980 for declaration and injunction.

4. Defendant nos 1 to 3 filed their written submission and opposed the suit. They contended that services of defendant no.4 were terminated illegally and therefore directed the plaintiffs to reinstate the defendant no.4 and include his name in pay sheet and the said order was legal and correct. Defendant no.4 also filed his written submission and opposed the suit claim and took the similar contention.

5. Perusing the pleadings of the parties the learned trial Judge framed issues and after considering the evidence adduced by both the parties the trial Court came to the conclusion that services of defendant no.4 were terminated illegally and directions issued by the defendant nos 1 to 3 was legal and correct. Naturally the suit was dismissed. Being aggrieved by the same, the plaintiffs preferred Civil Appeal No.24 of 1980 in the Court of 4th Additional District Judge, Solapur. The learned Appellate Court also held that the order passed by the trial Court was legal and correct. He, therefore, confirmed the order passed by the trial Court and dismissed the appeal.

6. Being aggrieved by the above mentioned order the plaintiffs have filed the present appeal. In this appeal before me the learned Advocate for the plaintiffs has urged only two points - firstly he submitted that the learned Appellate Court has held that services of the defendant no.4 were terminated legally and properly and in accordance with provisions of Section 7 of Maharashtra employees of Private Schools (Condition of Service) Regulation Act, 1977 (hereinafter referred to as the said Act). He also canvassed before me that order rejecting the claim of plaintiff is illegal. He therefore submitted that appeal be allowed and plaintiffs' suit be decreed. As against this, the learned Advocate for defendant nos 1 to 3 supported the judgment and order passed by the learned Appellate Court. Similarly the learned Advocate for defendant no.4 also supported the said order.

7. From perusal of the record it appears that only two substantial questions of law are involved in this matter, viz. firstly whether the first Appellate court was right in invoking the provision of Section 7 of the said Act in the present case and secondly, whether the order passed by the lower Appellate Court is legal and valid.

8. From the perusal of record it is quite evident that defendant no.4 was in service of plaintiff no.2

school as a temporary clerk. It appears that he submitted resignation on 2-1-19786 and management issued him notice dated 30-3-1976 and terminated his services. So, the question was whether the action taken by the management directing termination his services was legal and correct. It is true that learned appellate Court has observed that notice issued by the management to the defendant no.4 was not in accordance with Section 7 of the said Act and as such the said order regarding termination of defendant no.4's services was illegal. The learned Advocate for plaintiff submitted that Section 7 was in fact not applicable because at that time the above mentioned act had in fact not come into force. If we peruse the provisions of Sections 1 and 2 to the above mentioned act it is very clear that the said act came into force on 15-7-1981 so there was in fact no question to decide whether notice issued by management was in accordance with Section 7 or not. So, the learned Appellate Court was certainly not proper in applying the provision of Section 7 of the said Act to the facts of the present case.

9. Merely because the provision of Section 7 of the said act was not applicable it cannot be said that notice issued by the management to defendant no.4 was legal and correct. Ultimately one has to find out as to what were the rules and conditions prevailing at the relevant time and whether the termination of

defendant no.4's services were in accordance with the said rules and conditions. From perusal of the record it appears that by virtue of Government Resolution bearing NO.SSN-1867-76142-G dated 29-5-1973 certain directions were issued by Government with regard to

the employees in the private schools. It would be worthwhile to see clause 18 of the said Rule, which reads as follows:-

> 18. However, it is noticed that in case complaint cases, the Deputy Director of Higher authorities give decision to the effect that as a teacher X should be reinstated by the management.But the management fails, declines refuses to reinstate. In such case, the following arrangement will have to be made by the Deputy Director of Education/Education Officer/Education Inspectors, Greater Bombay should be directed to see that the salary in respect of substituted appointed in place of teacher X is not claimed by the Head Master of the concerned school. If such claim is preferred, the EOZ/EIS should be authorised to deal with claim from the pay bills and include the claim of salary of X in the pay bills and include the claim of salary of X in the pay bills prepared by the Head Master

> of the concerned school. this arrangement will ensure that the teacher X gets the salary under the scheme as per the decision of the Department. In the case, the substitute is not appointed, the salary of teacher X is also not claimed, even then the Education Officer should be authorised to include the name of such teacher X in the pay bill submitted by the Head Master. The procedure should be followed in case on non teaching staff also."

10. It is very clear that at the material time the said Government Resolution was in force and having regard to the same defendant nos. 1 and 2 had interfered and observed that services of defendant no.2 were not terminated properly and as a result of the same they issued further directions with regard to reinstatement of defendant no.4 and including his name in the pay sheet. So, from this aspect it does not appear that interference of defendant nos 1 and 2 was justified and was in accordance with law.

11. From perusal of the judgment of the trial Court it appears that trial Court had taken into consideration the fact that resignation submitted by defendant no.4 was in fact withdrawn by him on 10-2-1976 and as a result of the same the management was in fact not justified in terminating the services

of defendant no.4. So, on that count also the termination of defendant no.4's services were already illegal. Thus I have no hesitation to hold that finding recorded by both the courts below that services of defendant no.4 were wrongly terminated i legal and correct.

12. Once it was held that termination of defendant no.4's services was illegal and improper the action of defendant nos 1 to 3 was in accordance with law and as such the courts below rightly refused the plaintiff's claim regarding declaration and injunction. There is nothing on record to indicate that order passed by lower Appellate Court was otherwise illegal and improper or it was against the evidence on record.

13. In this view of the matter there is no substance in this appeal. The second appeal is dismissed with costs.

. Certified copy expedited.

(S.R.SATHE, J.)